IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10977 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT HIMALAYA CEMENTS LTD & 1 - Petitioner(s)

Versus

REGIONAL PROVIDENT FUND COMMISSIONER (RECOVERY) & 2 - Respondent(s)

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Appearance :

MR PARESH M DAVE for Petitioner(s) : 1 - 2.
MS HINA DESAI for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 28/09/2005

CAV JUDGMENT

1.By filing this petition under Article 226 of the Constitution of India, the petitioner – M/s Gujarat Himalaya Cements Ltd., has prayed to issue a writ of

mandamus or any other appropriate writ, order or direction setting aside the recovery notices issued by the respondents at Annexures - `C' and `D' in the compilation.

2. The petitioner – M/s Gujarat Himalaya Cements Ltd., is a company engaged in the business of manufacture of white cement at village Dharampur. It appears from the record that since the company has suffered cash losses in the successive financial years and the net worth of the company is completely eroded, the petitioner – company was declared as sick industrial company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (“SICA Act” for short). It is the case of the petitioners that this being the case, no proceedings for winding up of the company or for execution, distress or the like against any of the properties of the petitioner – company would lie or be proceeded with except with the consent of the Board for Industrial and Financial Recostruction (“BIFR” for short) as prescribed under Section 22 of the SICA Act.

3. It is the case of the petitioners that respondent nos. 1 and 3 have initiated the proceedings against the petitioner – company for causing distress and for the purpose of recovery of dues without the consent of the BIFR and therefore such proceedings are without

jurisdiction. It is the contention of the petitioners that if the approval was not granted by the BIFR for recovery of even statutory dues and taxes, no proceedings against the sick industrial company would lie. It is the case of the petitioners that though the petitioners have brought to the notice of the respondents that the petitioner – company is a sick company and that by virtue of Section 22 of the SICA Act, no proceedings for recovery, execution and distress to its properties could be proceeded with without the consent of the BIFR, the respondents have issued the notices giving very short time to the petitioner – company to pay up the disputed amounts or else to face recovery proceedings by way of Mamlatdar, Recovery. Under the aforesaid circumstances, the petitioners have approached this Court by filing the present petition for the aforesaid relief.

4. Heard the learned advocates for the parties.

5. It is submitted by Mr.Paresh M Dave, learned advocate appearing for the petitioners that the impugned recovery pertains to period prior to the date on which the petitioner – company's reference was registered before the BIFR and, therefore, the petitioner – company is entitled to the protection by virtue of Section 22(1) of the SICA Act. In support of his

submission, Mr.Dave has relied upon the decisions in the case of Tata Davy Ltd., V/s State of Orissa and others, reported in (1997) 6 SCC 669 and in the case of Core Healthcare Limited V/s State of Gujarat, reported in 2004 (3) GLR 2546.

6. On the other hand, Ms.Heena Desai, learned advocate appearing for the respondents, has opposed this petition and has submitted that the petitioner has not paid the provident fund and other dues from May 1992 onwards. She submitted that the petitioner company is employing about 74 to 76 employees and their dues working out to Rs.11,000/- and above per month are not being paid every month. She further submitted that it is the bounden duty of the petitioner company to pay the said outstanding dues which is the amount of workmen and the petitioner has no authority to withhold the same.

7. I have given my thoughtful consideration to the submissions made by the learned advocates for the parties.

8. It is required to be noted that merely because some proceedings are pending before the BIFR which does not mean that the respondents cannot recover the provident fund amount. It is required to be noted that even if the petitioner company is declared to be a sick

company, there cannot be any exemption to the petitioner company towards the payment of the provident fund amount.

9. It is well settled law that, no proceeding against any of the properties of the petitioner company can proceed except with the consent of the Board. However, in the instant case, upon bare perusal of the provisions of Section 22 of the SICA Act, it is clear that the provisions of Section 22 are not applicable to the facts of the present case.

10. It can be seen that the Court has taken the view in the above referred decisions that the protection under Section 22(1) of the SICA Act is available for the dues for the period prior to the date of registration of the reference of the company as a sick industrial company, but the sick industrial company is required to pay the current dues. In the present case, it is not in dispute that the impugned recovery pertains to the provident fund, which in any case of the matter, cannot be withheld by the petitioner company since the provident fund dues are the workers' dues. Therefore, the decisions relied upon by the learned advocate appearing for the petitioner are not applicable to the facts of the present case. Under the circumstances, I do not find any substance in any of the contentions of the

learned advocate appearing for the petitioner company and in this view of the matter, this petition is required to be dismissed.

11. Under the circumstances, this petition is dismissed. Interim relier granted earlier stands vacated forthwith.

(SHARAD D DAVE, J)

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